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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,392	04/19/2004	Kenneth G. McKee	2617U.001	4828
21917	7590	12/06/2005	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			NICOLAS, FREDERICK C	
		ART UNIT		PAPER NUMBER
				3754

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/828,392	MCKEE, KENNETH G.
	Examiner Frederick C. Nicolas	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6-8 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 and 23-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-8, 11, 12, 16-22 and 26-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1,6-8 and 11-28 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,6,11-12,16-18,21-22,26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostelman 5,295,601 in view of Ray 5,248,071.

Bostelman discloses a sealing cap (10) for a caulking tube tip (22) integrally formed with a caulking tube (24) as seen in Figure 4, which comprises a body member (12) having a solid top portion and a depending annular wall as seen in Figure 3, the top portion and the annular wall having a common outer surface as seen in Figure 3, the solid top portion and the annular wall forming an inner cavity (28), the inner cavity including caulking tube tip engagement means (32), wherein the engagement means cooperates with the caulking tube outer surface to provide inwardly radially compressive engagement (col. 4, ll. 1-15), wherein the caulking tube tip engagement means includes at least one internal helical thread and the at least one helical internal thread constructed and arranged to form threads on an external surface of the caulking tube (col. 4, ll. 1-15). Bostelman lacks that the inner cavity including at least one sealing means. Ray teaches the use of a sealing cap (100) having a caulking tube tip engagement means (114, 112, 110) and at least one sealing means (111) integrally molded therein as seen in Figure 2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the at least one sealing means (111) of Ray within the sealing cap interior cavity of Bostelman as taught by Ray in (col. 5, ll. 31-40), in order to assure an air tight connection between the caulking tube tip and the at least one sealing means.

3. Claims 7-8,19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostelman 5,295,601 in view of Ray 5,248,071 as applied to claim 27 above, and further in view of McIntosh 4,307,821.

Bostelman-Ray in combination has taught all the features of the claimed invention except that the outer surface includes a gripping means constructed and arranged to provide gripping for rotational engagement between the caulking tube tip and the sealing cap. McIntosh teaches the use of cap (30) having a gripping means (40) on the outer surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize McIntosh's teaching onto the outer cap surface of Bostelman and Ray by providing a knurled external finish as taught by McIntosh in (col. 3, ll. 6-8), in order to facilitate gripping and rotation of the cap by the user.

#### ***Response to Arguments***

4. Applicant's arguments filed 9/19/2005 have been fully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

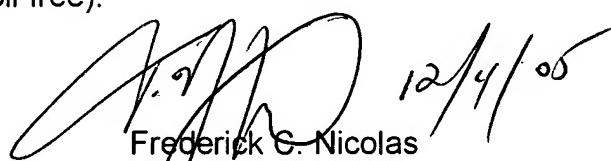
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
December 4, 2005



12/4/05  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754